

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

MICHAEL MUNIE, et al.,)	
)	
Plaintiffs,)	
v.)	Case No. 4:10-cv-01096-DDN
)	
CHRIS KOSTER, et al.,)	
)	
Defendants.)	

DEFENDANT KOSTER'S MOTION TO DISMISS

Defendant Chris Koster, Missouri Attorney General, moves this Court for an order dismissing Plaintiffs' complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted.

General allegations that Attorney General Koster has authority under, Mo. Rev. Stat. § 27.060 to enforce the laws of the state is insufficient to make him a proper party in litigation challenging state laws. *1st Westco Corp. v. School Dist. of Philadelphia*, 6 F.3d 108, 113 (3d Cir. 1993). Furthermore, "to determine whether there is an actual controversy, a district court must consider whether 'there is a substantial controversy between the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *Whitehead v. City of St. Louis*, 2009 WL 4430699, 3 (E.D. Mo. 2009) (citing *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941)). "If there is no such immediate controversy, a claim for declaratory relief is moot and must be dismissed." *Id.*

Attorney General Chris Koster is not a proper party to this lawsuit. Even if it is determined that he is, there is no immediate controversy in the case at bar and thus Plaintiff's Motion for Injunctive Relief should be dismissed. In support of this motion, Defendant Koster incorporates by this reference his memorandum in support, filed contemporaneously herewith.

WHEREFORE, based upon the forgoing and for the reasons explained in Defendants' Suggestions in Support, Defendant Koster requests this Court dismiss Plaintiffs' claims against Defendant Koster for failure to state a claim upon which relief can be granted, and for such other and further relief as may be just and proper in the premises.

Respectfully submitted,

CHRIS KOSTER
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 1st day of October, 2010, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system to:

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